



OLD ORCHARD BEACH
PLANNING BOARD
SEPT 2017 MEMO

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TO: Old Orchard Beach Planning Board
FROM: Planning Staff
SUBJECT: September Planning Board Meeting Summary
DATE: 14 September 2017

Below is a summary of pertinent issues related to the August Planning Board Agenda items:

Applicant Note: October meeting submission date is 25 September 2017.

ITEM 1

Proposal: Site Plan Review: Expansion of existing nonresidential (retail) building
Action: Discussion; Final Ruling
Owner: Harold H. Harrisburg, Phylis I Harrisburg and Harrisburg Group Gen Partnership
Location: 9 East Grand Ave., MBL: 306-2-6

After the August Public Hearing, the owner's agent indicated he is no longer representing the owner and requested a 30-day extension. The PB granted this request and tabled final review. Since the August meeting the owner has secured services of a new agent. I received an email from the new agent, attorney John Bannon, requesting the proposal be continued to October so that he can prepare:

As you know, Neil Weinstein has withdrawn his appearance as attorney for Harold Harrisburg with regard to Mr. Harrisburg's application for site plan review of an expansion of his building at 9 East Grand Avenue, MBL 306-2-6. The firm of Murray Plumb & Murray, and myself in particular, will henceforth be representing Mr. Harrisburg with regard to that application.

I note that this matter is presently the first Item on the Planning Board's agenda for its regular meeting scheduled for September 14, 2017. In order to represent Mr. Harrisburg's interests properly, I require additional time to study the application, the comments that have been submitted in relation to it, and the Planning Board's prior proceedings concerning it.

Accordingly, on behalf of all the applicants (Mr. Harrisburg, Phyllis I. Harrisburg, and the Harris Group General Partnership) I request that the meeting on this item be continued until the Planning Board's regular meeting in October, 2017.

I informed Mr. Bannon that I will forward your request and expect the PB will grant. Note the applicant can request no more than two 30-day extensions. This is the second extension so the PB should be prepared to issue a decision at the October meeting.

RECOMMENDATIONS: Staff recommends the PB grant the second, 30-day extension.

ITEM 2

Proposal: Major Subdivision: 20 lot cluster subdivision for single-family residential use (Eastern Trail Estates)
Action: Discussion; Waiver Ruling; Preliminary Plan Ruling
Owner: Ross Road LLC
Location: Ross Rd, MBL: 107-1-4, 14 & 16

<u>ET Estates</u>	<u>Project Status</u>
<i>Sketch Plan</i>	Completed in January
<i>Preliminary Plan</i>	Submitted in May; amended in June, July and August
<i>Site Walk</i>	Held in June
<i>Application Complete</i>	Conditionally determined complete in July
<i>Public Hearing</i>	Held in August
<i>Preliminary Plan Vote</i>	Scheduled for September
<i>Final Plan Vote</i>	

Introduction:

At the August meeting, the Planning Board held a Public Hearing and voted to table the application due to some outstanding items. These outstanding items include: A waiver request associated with the 18 lots on Mary’s Way, site distance, stormwater, Saco implications including the use of Easy Street, Eastern Trail access, and snowplowing.

The purpose of the September meeting is for the Planning Board to make a decision on the Preliminary Plan and vote on the waiver request.

In your packet for September, the following items have been included and described below:

1. Email from Town Attorney, Phil Saucier re: Joint Review for Easy Street
2. Email from Saco Planner Bob Hamblen re: Joint Review of the Project
3. Supplemental Stormwater Analysis from BH2M
4. Memo from Wright Pierce re: Stormwater and Site Distance
5. Letter from Attorney Bryce Ingraham re: Easy Street and Associated Deeds
6. Email from DPW Director, Joe Cooper re: Snow Storage

September Submission:

#1: Email from Town Attorney, Phil Saucier re: Joint review for Easy Street

As you recall, the Applicant has submitted a waiver request for §78-309(1): “Subdivisions containing 15 or more lots shall have at least two street connections with existing public streets or streets shown on the official map, as such exists, or streets on an approved subdivision plan for which a bond has been filed.” The project, as designed, includes 18 lots to be served by one means of egress, “Mary’s Way.” With the concern about having 18 lots served by that one means of egress, the Applicant discussed using Easy Street to obtain the second means of egress.

There were some issues brought up by the Abutter, Eric Begin at the August meeting pertaining to the use of Easy Street. Planning Staff discussed this with the Town Attorney and any issues associated with the deeds is something that has to be discussed between the Applicant and the Abutter. The PB will have to make a determination as to whether or not the deed, as presented, appears to show that the Applicant has the ability to use Easy Street to obtain that second means of egress.

However, the Town Attorney cited that if any portion of a subdivision crosses a municipal boundary, all meetings and hearings must be held jointly between the PBs of each municipality. If the required second street connection would be through Easy Street, it would cross the municipal border of Saco (see plan below). There was a similar case as it pertained to an access road. If the subdivision proposed to use Easy Street or anything that pertains to Saco, it will require joint review. The Town Attorney recommended that Bob Hamblen in Saco provide a letter to the PB about whether or not he thinks the project should require joint review.



#2: Email from Saco Planner Bob Hamblen re: Joint Review of the Project

The Planner in Saco conferred with his City Attorney on the need for joint review between our PB and the Saco PB. The consensus was that Saco is not overly concerned with the OOB PB moving forward and does not see a need for joint meetings at this time. They do, however, recommend that a COA be placed on the project that if any changes are made to the Saco portion in the future, the Applicant will need full Saco review at that time.

#3: Supplemental Stormwater Analysis from BH2M

There were some concerns discussed at the August Planning Board meeting pertaining to stormwater. One of them was in regards to the WP comment in the July 3rd memo: *“the proposed storm drains are noted as 0.004 ft/ft. for a 12 inch line, as proposed, we would recommend a 0.005 ft/ft slope to facilitate self-cleaning/resuspension of solids that may settle in the pipes.”* The most recent memo from BH2M indicates that *“the proposed storm drain crossings have been adjusted to provide a minimum slope of 0.5%”* so this is no longer an issue.

A second comment raised by WP were issues associated with the outlet of the wet pond and details associated with off-site drainage. This was also raised at the Public Hearing. WP thought that there should be some further discussion on the off-site drainage, particularly the area where the wet pond discharges. WP wanted some

clarity on how the runoff moves and where it goes. There were also two areas where the project has higher post-development peak flows. BH2M has indicated that they do not believe this is an issue.

Stephanie (Wright Pierce), Megan, Joe (DPW), Bill and Steve (BH2M) attended a site walk on August 29th to look at the drainage issues. It was determined at this meeting that BH2M should provide a summary of the drainage/connectivity between the Ross Road ditch lines, wetland and outfalls, a summary of modelling and site observations. This has been included in your packet for September titled “*supplemental stormwater analysis*” as well as a summary memo from Stephanie at WP.

#4: Memo from Wright Pierce re: Stormwater and Site Distance

Stormwater

The stormwater discussion pertained to the items discussed above, the wet pond discharge and an increase in post-development peak flow to abutting properties. Other items were discussed at the August 29th site walk including the potential for future development to discharge into this OOB project. BH2M indicated that stormwater will be handled separately for the future development portion. The DPW Director discussed future maintenance of the ponds and BH2M indicated that they will be the responsibility of the HOA.

Site Distance

There has been some back and forth regarding site distance for the subdivision. At the August 29th site walk, the centerline for the road had been staked out. WP went out to the site and measured greater than 475 feet of site distance in both directions. They did mention a separate review should be required for the driveways associated with lots 19 and 20. BH2M should provide a note on driveway placement associated with these lots on the plan or it should be added as a COA.

At the last PB meeting, Planning Staff recommended the applicant ask for a waiver for site distance associated with single-unit trucks as our interpretation was that a single-unit truck could be something as small as a pickup truck. After speaking with WP, single-unit trucks are typically commercial vehicles such as oil delivery trucks, U-haul, etc. The trigger for a development to meet the site distance required for single-unit trucks would be if the trucks comprise greater than 30% of the traffic use at the proposed project entrance. Because single-unit trucks do not amount to more than 30% of the traffic at the proposed entrance, Planning Staff believes this waiver request is no longer necessary.

#5: Letter from Attorney Bryce Ingraham re: Easy Street and Associated Deeds

At the August meeting, BH2M mentioned that the Applicant’s Attorney has a letter regarding an Easement to use Easy Street. As you recall, the Abutter, Eric Begin has stated that the Applicant does not have rights to use Easy Street. This letter claims that they do and includes a deed. It is up to the PB to make a determination as to whether or not the deed shows that the Applicant has the rights to use Easy Street as a second means of egress.

#6: Email from DPW Director, Joe Cooper re: Snow Storage

Joe has provided an email that states that there needs to be an area for OOB to plow snow. Snow storage has not been addressed in the submission for September.

Outstanding Items for August (Update):

As noted above, there were six primary items that were left outstanding at the August meeting.

1. Waiver request associated with the 18 lots on Mary’s Way

The PB needs to vote on the request to waive the requirement for a second means of egress for the project. Standard: §78-309(1): “*Subdivisions containing 15 or more lots shall have at least two street connections with existing public streets or streets shown on the official map, as such exists, or streets on an approved subdivision plan for which a bond has been filed.*”

There are a few options the PB has to handle this waiver request.

- If the PB does not feel comfortable with this, they can limit the number of lots developed that will use the single access to Ross Road to 14 lots until a second means of egress is approved and constructed. Assuming lots 19 and 20 will have their own driveways to Ross Road, Planning Staff believes it is fair to exclude those from the 14 lots. So, the 14 lots will come from lots 1-18. If the PB decides not to grant the waiver but allow the proposal to move forward as described above, the applicant should identify the 14 lots by placing a note on the signed plan and the PB should add a condition. Something to note – the infrastructure, utilities, etc. abutting the excluded 4 lots must still be built.
- The PB has the option to not grant the waiver request and limit the number of lots developed that will use the single access to Ross Road to 14 lots.
 - If the PB decides not to grant a waiver, a reason why still has to be stated. For example, a potential access for a second means of egress exists but the applicant does not want to move forward with it.
- The PB has the option to grant the waiver for the 18 lots contingent on the future use of Easy Street to obtain the second means of egress and review of the deeds submitted. Something to note: This will require joint review with Saco and there still remain some outstanding issues associated with the use of Easy Street (i.e. ownership, deeds, road condition, maintenance agreements, etc.)
- The PB has the option to grant the waiver for the 18 lots without requiring the second means of egress.

Subdivision waiver requirements (74-34):

- (a) Where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter or where there are special circumstances of a particular plan, it may vary this chapter so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance in chapter 78, where such exist.*
- (b) Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.*
- (c) In granting variances and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified*

2. *Site distance*

Planning Staff believes that this issue has been addressed. See discussion above.

3. *Stormwater*

A supplemental stormwater analysis has been submitted for September that illustrates the slight increase in peak flow rates and states that it will not create an adverse impact. Wright Pierce provided a response to this report and has noted that overall everything has been addressed that was requested. However, there were discussions regarding the topography along Ross Road and abutting properties, which was not addressed in the summary. Nevertheless, they do indicate in the report that they provide the analysis to “illustrate the increase in peak flow rates that will not create an adverse impact.”

4. *Saco implications including the use of Easy Street*

This appears to be a nonissue at this time. However, if the PB decides to grant a waiver request contingent on the future use of Easy Street to obtain the second means of egress, joint review will be required and the PB will have to address the outstanding issues associated with Easy Street as briefly noted above.

5. *Eastern Trail access*

The PB requested an easement for public access to the Eastern Trail and requested that this be noted on the plan. An updated plan has not been submitted for the September meeting.

6. *Snowplowing*

Snow storage has not been addressed in the submission for September.

RECOMMENDATIONS: The purpose of the September meeting is for the PB to vote on the Preliminary Plan and make a decision on the waiver request.

As discussed above, there are four ways the PB can handle the waiver request.

1. Not grant the waiver request and limit the number of lots developed that will use the single access to Ross Road to 14 lots. The plan will show only 14 lots to be served by Mary's Way and the two additional lots on Ross Road. If the PB decides not to grant a waiver, a reason why still has to be stated. For example, a potential access for a second means of egress exists but the applicant does not want to move forward with it.
2. Not grant the waiver request and limit the number of lots developed to 14 and the two on Ross Road until the second means of egress is approved and constructed. The plan can still show the 4 additional lots, however, these cannot be built until that second means of egress is in place. Note: If the PB decides not to grant a waiver, a reason why still has to be stated. For example, a potential access for a second means of egress exists but the applicant does not want to move forward with it.
3. Grant the waiver request for the 18 lots contingent on the future use of Easy Street to obtain the second means of egress. Something to note: This will include joint review with Saco as well as addressing the outstanding issues associated with the use of Easy street (i.e. ownership, deeds, road condition, maintenance agreements, etc.).
4. Grant the waiver request for the 18 lots without requiring the second means of egress.

If the PB decides to approve the preliminary plan, the following conditions should be attached to the approval:

- Snow storage shall be shown on the final plan submitted for October.
- An easement for public access to the Eastern Trail shall be noted on the final plan submitted for October.

BACKGROUND (AUGUST MEETING)

At the July meeting, the Planning Board voted the application complete contingent on the waiver requests and scheduled the Public Hearing for August 10th. The purpose of tonight's meeting is for the Planning Board to gather comments from the public and make a ruling on the Preliminary Plan. In your packet for August, the Applicant has submitted updated application materials and design plans that attempt to address concerns raised by the Planning Board, Staff and Wright Pierce.

In July, one of the concerns discussed by the Planning Board was the previous use of the site as a junkyard. Planning staff and the Planning Board chair went out to the site with Randy McMullin at DEP and he said the materials that are likely underground are "inert" and because of this DEP does not have any concerns about the site.

Email from Randy McMullin:

The important thing to keep in mind for something to be “risky” there needs to be a good pathway of exposure for a human to get “dosed”.

Example would be if there were drinking water wells located in the plume of something nasty underground then you would be able to get it into your body from normal water for drinking or cooking and bathing.

This proposed subdivision has city water so that pathway is just not there. Most garden plants are not really very good in pulling contaminants into the plant flesh we eat. Maine real estate laws require the seller to notify the buyer of anything out of the normal here. In short Kevin should tell any buyers that this place used to be a junkyard in the 60’s. Anything the homeowners dig up and want removed to a real disposal location, they will have to do themselves would be my guess.

Also here is our definition of “inert fill” from here...in Chapter 400.1.RRR

<http://www.maine.gov/sos/cec/rules/06/096/096c400.doc>

RRR. Inert fill. "Inert fill" means clean soil material, including soil from road ditching and sand from winter sand cleanup; rock; bricks; crushed clean glass or porcelain; aged, fully-hardened asphalt; and cured concrete; that are not mixed with other solid or liquid waste, and are not derived from an ore mining activity.

There are a few updates to point out from the new submission materials. These pertain to waivers, sight distance, Saco implications, access to the Eastern Trail and the cluster subdivision standards and are described below.

Waivers

First, at the last meeting, the Planning Board voted to table the waiver request for the second means of egress that is required for over 15 lots. The board wanted additional information on the ownership of Easy Street. A deed describing the use of Easy Street by the applicant has been submitted for August. Staff recommends that this deed be reviewed by the Old Orchard Beach Assessor. An update on this will be provided at the August 10th meeting. Note: If the Planning Board decides to move forward with the waiver, the subdivision waiver requirements apply (74-34):

(a) Where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter or where there are special circumstances of a particular plan, it may vary this chapter so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance in chapter 78, where such exist.

(b) Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.

(c) In granting variances and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified

As a reminder from the July meeting, regarding the subdivision access waiver, if the PB does not feel comfortable with this they can limit the number of lots developed that will use the single access to Ross Rd. to 14 lots until a second access is approved and constructed. Assuming lots 19 and 20 will have their own driveways to Ross Rd, I believe it is fair to exclude these from the 14 lots. So, the 14 lots will come from lots 1 – 18. If the PB decides not to grant the waiver but allow the proposal to move forward as described above, the applicant should identify the 14 lots by placing a note on the signed plan and the PB should add a condition. Something to note- the infrastructure, utilities, etc. abutting the excluded 4 lots must still be built.

Sight Distance

The PB had concerns about sight distance on Ross Road. The ordinance, §74-309(m) states that the required amount of distance on the 35MPH road for passenger cars is 350 feet, for single-unit trucks it is 475 feet. The ordinance does allow for a 30% reduction, however, it states: *“Note: Where it is impossible to meet these sight-distance standards, due to physical conditions, a maximum variance of 30 percent may be permitted, in accordance with the waiver provisions in section 74-34. The 30-percent variance is consistent with the absolute minimum stopping distance requirements on wet pavements established by the state department of transportation.”* The variance must still comply with the three subdivision waiver requirements listed above (74-34). The applicant should submit a formal waiver request that shows why it is impossible to meet the sight-distance standards due to physical conditions.

Saco Implications

There were questions raised at the July meeting regarding how this project will work with access through Old Orchard Beach to get to the Saco portion. Some of the points raised:

- Are there elements of this proposal that need the Saco piece of the development to be constructed in order for the OOB piece to function properly?
- There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approved- is this project designed to accommodate the future expansion?
- What if the Saco piece is not built?
- What is the timing of the Saco development?

Responses to each of these were not included in the submission for the August meeting.

Eastern Trail Access

At the July meeting, the Planning Board had some questions about access to the Eastern Trail. Some of the questions raised:

- Will this be public access?
- What if Mary’s Way is a private road will public access still be permitted?
- How will this work before development of the Saco piece?

The Applicant indicated verbally that the project owner is planning on having non-restricted access to the Eastern Trail and that they will have sidewalks throughout the development as it is intended to be accepted as a public road. It is still unclear how this access will work without the Saco piece developed.

Cluster Subdivision Standards

§74-278 of the ordinance says that “all planned unit developments and cluster development shall meet the requirements for a residential subdivision, including planning board approval, except those requirements related to layout, setbacks, frontages and areas.” This is how the applicant was able to have 70 feet of frontage for lot 4.

DEPARTMENT COMMENTS:

Wright-Pierce offers comments in a separately attached memo. A majority of the comments were addressed, however, a few minor comments remain outstanding and/or require further coordination. We recommend the applicant address these comments and include any plan and application changes in the next submission.

WWTF:

If this is going to be on septic tanks then I have no concern. If they will be on public sewer I will take a closer look.

Others:

Staff expressed some concerns about one means of egress and snowplowing at the Development Review meeting, however, further comments were not received.

RECOMMENDATIONS: Planning Staff recommends the following:

1. Vote on the two remaining waiver requests. If the PB decides to grant or not grant a waiver the reasons why should be stated. If a waiver is not granted in regards to the single street connection, we recommend the PB consider the option discussed above (**pending comments from the Assessor**).
2. Discuss the other issues identified in this memo and any others you may have (i.e. waivers, sight distance, Saco implications, Eastern Trail access) what can be resolved by explanation? What needs to be submitted to resolve?
3. Preliminary plan vote. If the PB feels the application can receive preliminary plan approval it must be contingent upon receiving corrections, additions, etc. as identified by the Board.

BACKGROUND (JULY MEETING)

This project was brought before the Planning Board in January as a sketch plan. In May, the Preliminary Plan was submitted and in June a site walk was held. The proposal is for the creation of 20 lots with one access to Ross Rd. The project will be served by public water, individual septic systems and natural gas from the Eastern Trail. There is a second phase of the project which will be located in Saco with approximately 13 additional lots that abut the Eastern Trail.

At the PB's last meeting, it was determined the preliminary plan was not complete. There were a couple of outstanding issues so the PB decided to table the preliminary plan decision. Below is a summary of these issues and where we stand:

- Cluster subdivisions have specific standards in the subdivision ordinance (74-278). We recommend the applicant demonstrate how the proposal conforms to each standard. If the applicant feels a particular standard is not applicable we ask them to provide a brief explanation. Since this proposal is a cluster subdivision, we feel that it is critical the applicant demonstrate conformance to 74-278. Also, the PB needs this to properly evaluate the proposal. *The applicant has provided responses to these in their July submission.*
- Although we received Wright-Pierce comments, none of these pertain to stormwater because we received the stormwater report late (3 May). Because stormwater is a significant part of Wright-Pierces' technical review, we feel this review must be completed before the proposal is determined complete. *Wright Pierce comments have been received for the July meeting.*
- The proposal includes more than 15 lots and only one access. 78-309 (1) requires subdivisions with 15 or more lots to have at least two street connections. The applicant can seek a waiver but must provide a formal request in accordance with 74-34. *A formal waiver request has been provided in their July submission.*

Two waiver requests have been submitted with this application:

- Waiver request of the requirement of having at least two street connections with existing public streets for subdivisions that contain 15 or more lots (74-309 (1)).
- Waiver request to allow individual subsurface disposal systems for the 20 lots. The applicant has provided a letter from a soil scientist discussing installing individual septic systems versus a common septic system to serve all of the lots.

Because both waiver requests are associated with subdivision ordinance standards the subdivision waivers requirements apply (74-34):

(a) Where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter or where there are special circumstances of a particular plan, it may vary this chapter so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance in chapter 78, where such exist.

(b) Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.

(c) In granting variances and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified

Regarding the subdivision access waiver, if the PB does not feel comfortable with this they can limit the number of lots developed that will use the single access to Ross Rd. to 14 lots until a second access is approved and constructed. Assuming lots 19 and 20 will have their own driveways to Ross Rd, I believe it is fair to exclude these from the 14 lots. So, the 14 lots will come from lots 1 – 18. If the PB decides not to grant the waiver but allow the proposal to move forward as described above, the applicant should identify the 14 lots by placing a note on the signed plan and the PB should add a condition. Something to note- the infrastructure, utilities, etc. abutting the excluded 4 lots must still be built.

The applicant has indicated that the roads are going to be constructed to be offered as public streets. Department heads and staff expressed some concerns about this at the May and January meetings (see Department Comments below). The primary concerns are the dead end streets for snow storage and plowing as well as the one means of egress. Mary's Way is a dead end until the Saco piece is built. Ordinances require some kind of turn-around.

The Planning Board wanted more information on how this project will work with access through OOB to get to the Saco portion. Are there elements of this proposal that need the Saco piece of the development to be constructed in order for the OOB piece to function properly? There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approved- is this project designed to accommodate the future expansion? What if the Saco piece is not built? What is the timing of the Saco development?

The developer indicates the subdivision will have access to the Eastern Trail. Will this be public access? What if Mary's Way is a private road will public access still be permitted? How will this work before development of the Saco piece?

Lot driveways. Lots 19 and 20 driveway locations should be shown on the plan. What is the site distance for both lots? Ensure Lots 1 and 18 driveways are off Mary's Way- please place note on the plan.

Lots 1 and 18 are double frontage lots adjacent to an arterial road. Lots such as these typically require a 20' easement along the arterial frontage (Ross Rd) to be reserved as a planting screen and no driveway access. With the concerns about traffic on Ross, a planting screen may not be a good idea.

Sight distance. Ross Rd speed limit along this section is 35 mph. Ordinance site distance for 35 mph is 350' for passenger cars and 475' for single-unit trucks (includes two-axle, four-tire trucks and other single unit trucks). The traffic assessment prepared by Traffic Solutions states the site distance is 400 ft. plus and meets MDOT site distance requirements of 305 ft. Although it meets MDOT's site distance requirements it is not known if it meets town requirements for single-unit trucks because a specific measurement is not provided.

The Planning Board had concerns at the site walk that this development was previously a junkyard. It appears from the submission materials that no subsurface exploration was conducted that was specific to determining the extent of the junkyard and if it would impact the subdivision. The concern is the unknown this creates- what may seem ok now may not be once road, utility, home/lot development, and other forms of excavation begin. The purpose of subdivision review is to ensure the comfort, convenience, safety, health, and welfare of the people; protect the environment; and to promote an economically sound and stable community. Therefore, it's important to know if there are elements of the junkyard that remain and could be detrimental to the subdivisions' future residents and the environment.

For lot 4 to be developed the road needs to be improved along the entire frontage. Based on the plan it appears it will only be partially improved along the frontage.

Fire Department Chief Ed Dube requests a fire hydrant at the corner of Ross Rd and Mary's Way and another on Kylie Lane (see Department Comments July). Chief Dube stated it would be very helpful to place a hydrant on Ross Rd.

Wright-Pierce offers comments in a separately attached memo. We recommend the applicant address these comments and include any plan and application changes in the next submission.

There is a wetland complex in the area designated as lots 1-4. At the January meeting, BH2M mentioned filling these in and that DEP permits would be required. Staff has not received any updates on this process.

The Post Construction Stormwater Management Plan (PCSMP), O&M Plan has been submitted, however, it is missing the following elements:

- Site-specific project description with a list of State and Federal permits required by the project.
- List of site-specific BMPs with a designation on which ones could discharge to the MS4. An example table of this is included in the PCSMP Guidance Document.

DEPARTMENT COMMENTS (JULY):

FD:
In regard to Eastern Trail Estates off the Ross Road can we move the hydrant from Mary's way to the corner of Ross Road and Mary's Way and add another one on Kylie Lane.

RECOMMENDATIONS (JULY): Planning Staff recommends the following:

1. Vote on waiver request. The waiver request is critical to this proposal moving forward as proposed. If the PB decides to grant or not grant a waiver the reasons why should be stated. If a waiver is not granted in regards to the single street connection we recommend the PB consider the option discussed above.
2. Discuss the other issues identified in this memo and any others you may have. What can be resolved by explanation? What needs to be submitted to resolve?

3. Determination of completeness. If the PB feels they can determine the application complete it must be contingent upon receiving corrections, additions, etc. as identified by the Board.
4. Schedule a public hearing for the August meeting.

BACKGROUND (MAY MEETING):

This project was brought before the Planning Board in January as a sketch plan. At the time it was for the development of 20 lots off of Ross Road, adjacent to Easy Street. They are now proposing to develop 21 lots which will be served by public water and natural gas from the Eastern Trail. There is a second phase of this project to be located in Saco with approximately 13 additional lots that abut the Eastern Trail.

At the January meeting, BH2M stated that the roads will be constructed to be offered as public streets. The Planning Board had some questions/concerns at that meeting to be followed up on (*italics* list below are outstanding):

1. *With the project split between two Towns, does this change the definition of “cluster zoning”? The Planning Board wanted information on how this project will work with access through OOB to get to the Saco portion. There was also a question about the infrastructure that will be used by the Saco portion that the OOB Planning Board approves. What happens with a cluster subdivision that abuts another municipality?*
2. The Planning Board wanted to see a traffic study for a basic idea of what will happen in the Ross Road area. This has been submitted for the May meeting.
3. *The applicant is requesting a waiver to the centralized collection system standard. In the Town Ordinance Sec. 74-278(7): Planned Unit and Cluster Developments “all structures with required plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter.” The Planning Board discussed that if this is going to be waived for each proposal, why is it still part of our ordinance?*
4. *The project contains 21 lots with only one means of egress, which will be the proposed Mary’s Way off of Ross Road. This is a major concern that has been discussed by Planning Staff and Department Heads. At the January meeting, the Planning Board discussed the use of Easy Street as a second means of egress with an emergency breakaway gate? How can the second means of egress be achieved with this development? With the Lands’ End Subdivision that was approved in 2008, Easy Street was supposed to be brought up to subdivision standards, however, this project was never started.*
5. *There is a wetland complex in the area designated as lots 1-4. At the January meeting, BH2M mentioned filling these in and that DEP permits would be required. Planning Staff has not received an update on this.*
6. *The application did not include a stormwater management report so this has not been reviewed by Wright Pierce.*

There were some other items discussed at the January meeting including:

- The notification procedure with Saco. Because this project is located within 500 feet of a municipal boundary, Saco will be notified through the Public Hearing process. The City Planner, Bob Hamblen received the sketch plan and has received a copy of the preliminary plans for the subdivision.
- The Planning Board also discussed the potential of trail networks in the open space portion of the site. Because the subdivision will eventually abut the Eastern Trail, there is the potential for trail networks to connect from the Eastern Trail through to Ross Road. A conversation has already started with the Eastern Trail Management District (ETMD) about potential trail connections as well.
- Because this project is located in the Goosefare watershed and is over one acre a Maintenance Agreement will have to be signed and a Post-Construction Stormwater Management Plan including a list

of all BMPs with designation on the ones that discharge to the Towns MS4 (i.e. Ross Road) will have to be submitted and reviewed by the Planning Board.

- Wright Pierce comments were received for the May meeting and have been included in your packet. Stephanie does have some outstanding concerns listed in her memo.

Additional discussion items for the May meeting. There are three primary items staff feels need to be addressed before the PB determines the proposal complete.

1. Cluster subdivisions have specific standards in the subdivision ordinance (74-278). We recommend the applicant demonstrate how the proposal conforms to each standard. If the applicant feels a particular standard is not applicable we ask them to provide a brief explanation. Since this proposal is a cluster subdivision, we feel that it is critical the applicant demonstrate conformance to 74-278. Also, the PB needs this to properly evaluate the proposal.
2. Although we received Wright-Pierce comments, none of these pertain to stormwater because we received the stormwater report late (3 May). Because stormwater is a significant part of Wright-Pierces' technical review, we feel this review must be completed before the proposal is determined complete.
3. The proposal includes more than 15 lots and only one access. 78-309 (1) requires subdivisions with 15 or more lots to have at least two street connections. The applicant can seek a waiver but must provide a formal request in accordance with 74-34.

There are some concerns regarding Lot 21. We have been told this lot is currently under contract and may be sold before a final decision is made on the proposed subdivision. Town ordinances state "no person may convey, offer or agree to convey any land in a subdivision which has not been approved by the planning board and recorded in the registry of deeds. With the language above we wondered is the sale of a lot that is in a proposed subdivision that has not yet been approved a violation of subdivision law. We researched this and based upon what we found (town attorney legal opinion), it appears this is not a violation as long as the contract or offer to sell the lot is contingent upon subdivision approval. If three or more lots associated with the subdivision were for sale before the subdivision was approved than this would be violation because three or more lots creates a subdivision. The Law Court ruled on a matter similar to this (Paldac v. Rockland)- because three or more lots must be created before a subdivision occurs, placing one housing unit did not create a subdivision since it was the "first lot". The Court noted, until a property owner "actually creates a subdivision, the fact that it has filed an application for approval does not halt its freedom to pursue other legal uses of the land as well." Having said the above we do feel this could be questioned and delay the subdivision from moving forward. We felt an easy remedy was to remove Lot 21 from the subdivision as it can be sold separately without triggering subdivision review by itself (the creation of 1 lot). We received revised plans (11 x 17) showing the removal of Lot 21 which are included in this month's submission. Finally, the Town Manager, Public Works Director, PD Chief, and Fire Chief offer comments that need to be addressed by the applicant.

DEPARTMENT COMMENTS (MAY):

Public Works:

DECLARATION OF OWNERS ASSOCIATION WITH COVENANTS, RESTRICTIONS AND CONDITIONS.

From the Preliminary Application:

4. Purposes and Power ...” Open space areas and roadway areas shown on the Plan, including without limitation, maintenance and preservation of the same, and enforcement of all covenants and restrictions set forth herein.”

States:

- a) Removal of snow from the Common areas including, without limitation, sidewalks (if any), walkways, and driveways; and....
- f) Maintenance and repair of roads and sidewalks until the same are accepted by the Town; and
- g) Collection and removal of refuse and rubbish from the Subdivision

Comments: Reading this we can assume that

1. The association is responsible for snow removal on the sidewalks
2. They will maintain the roads (plowing?) until its accepted.
3. They are responsible for trash collection.

On the Plan:

Need a place for snow storage in the cul de sac and need a place at the Town Line.

Who is responsible for Street Lights? Should be association.

I feel that we should not have another development with dead end streets.

Town Manager:

I wasn't at yesterday's meeting so I am commenting without the benefit of seeing the latest proposal.

Nonetheless my thoughts at that the Town should be clear that we will not accept these streets unless they are built to allow for efficient winter maintenance. No dead end streets, no need to remove snow, adequate snow storage.

RECOMMENDATIONS (MAY): We feel there are still a number of outstanding items that need to be addressed before the Planning Board can rule on the preliminary plan. The Planning Board can schedule a site walk for 1 June but a public hearing should not be scheduled until the application is determined complete.

BACKGROUND (JANUARY MEETING):

Project Background:

This is a Sketch Plan proposal for a Major Subdivision – 20 lots – off of Ross Road adjacent to Easy Street and across from “Reclaim the Plains – Blueberry Plains.” The current use is an undeveloped wooded lot.

Comments from Planning Staff, Departments and Wright Pierce:

There is an area on the plan designated as “future development” – the development of up to 20 lots will occur in Saco at a later date after the Old Orchard Beach portion. There is the potential for access concerns with only having one entrance to the lots. This concern could be further exacerbated knowing the future development potential on the Saco side. A conversation has already begun with Saco’s Planner Bob Hamblen. Staff felt it was important to get them involved early on in the process and keep them involved as the project moves forward.

Per the Town’s Ordinance (74-231(f)): If a subdivision is located within 500 feet of a municipal boundary, a public hearing shall be held. The Planning Board shall notify the clerk and the Planning Board of the adjacent municipality involved at least 10 days prior to the hearing. Comments and recommendations made by the Planning Board of the adjacent municipality shall be given due consideration in the deliberations and decision-making process of the Planning Board.

This project is in the Rural District of Town. There could be opportunities for open space/trails as part of this development that the Planning Board could take into consideration.

This project is over an acre and located in the Goosefare watershed. There will be Chapter 71 (Post-Construction Stormwater Ordinance) implications. The Town will be looking for the Developer to enter into a Maintenance Agreement, submit a Post-Construction Stormwater Management Plan and provide the Town with a list of all BMPs proposed on site with a designation on those that have the potential to discharge to the Town’s MS4 (i.e. Ross Road).

In addition, this project is in the Goosefare Watershed and because of its close proximity to Saco, there is the potential for the Developer to pay into Saco’s Compensation Fee Utilization Plan (CFUP). This would allow the developer to allocate funds toward future projects in the Goosefare watershed in lieu of additional improvements on site. The Town of Old Orchard Beach does not have this Plan in place, it is something the Planning Board will look into this year, however, it is something to consider as part of this proposal.

DEPARTMENT COMMENTS (JANUARY):

PD:

Jeffrey, as we discussed Wednesday at our development meeting, I have concerns with adding another 20 homes and possibly an additional 10 or 12 future homes, to what is in my opinion, an already overloaded intersection at Ross and Cascade Rds. It seems that, individually, these projects in and around that intersection, do not, by themselves, warrant a traffic study. However, collectively, it seems like to me that they should. I understand that we currently do not require impact fees for any future road or intersection improvements. I don't see how we can keep adding housing to this area, and not, at some point, have to consider the overall impact these projects will surely have on the intersection of Cascade and Ross rd. It is poorly designed, has poor sight distances, and is a high crash area. Unfortunately, it doesn't meet the warrant required by MDOT for a signal. Anyone who has had to experience that intersection, especially during the summer, knows how difficult and dangerous it can be. We keep adding more and more housing, but do not address the long term traffic impacts. It seems to me, that developers should be paying for future costs associated with the impact on infrastructure and traffic related problems, created by developments they build. The intersection of Ross Road and Cascade Rd, should be addressed now, and I don't think it is fair to put the burden of any immediate or future improvements (signals, road improvements, street lights and sidewalks) on the backs of tax payers. Other than for these reasons, I do not have any objections to these kinds of projects moving forward. They certainly contribute to the revenue stream through property taxes, but, I can't help but wonder if the overall impact on our schools, costs for plowing and maintaining new roadways, police and fire services, and potential infrastructure improvements, outweighs any benefit derived from additional tax revenues. It may be that we have to change our ordinances to require impact fees on these types of projects, perhaps even a moratorium on future development until these issues can be addressed.

FD:

In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.

NFPA: 18.3 Fire Hydrants

NFPA: 18.2.3 Fire Department Access Road

NFPA: 18.2.3.4.4 Dead Ends

NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

Wright Pierce comments were received on December 22, 2016. A couple of things to point out specifically from Stephanie's memo:

- A portion of the property to be developed (Lots 1-4) appears to be in what is designated as a wetland on the GIS, construction details will have to be provided for this area.
- According to the Town ordinance, any development with greater than 15 lots requires a second means of egress. There is the possibility of using Easy Street, however, this is a private dirt road and at this time it's unclear whether or not the street could be brought up to subdivision standards and used as access for the subdivision.
- In 2011 the Town reviewed the Land's End Subdivision which was proposed to be located in this area to the left of Easy Street. As part of the subdivision approval, Easy Street was to be upgraded and used as an access to the 8 proposed lots (*see attached plans & FOF*).
- The 20 lots are to be served by individual onsite subsurface disposal systems, there is the possibility of connecting each of the lots to one centralized collection system and given the fact that the project is in the Town's priority watershed, this is something that should be looked into. In the Town Ordinance Sec. 74-278(7): Planned Unit and Cluster Developments "all structures with required plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter."

ITEM 3

Proposal: Site Plan Review: Expansion of existing corps and admin building, parking lot construction, building demo, landscaping, site work
Action: Discussion; Final Ruling
Owner: The Salvation Army
Location: 6th St, Union Ave, Church St, Oakland Ave, 15th St; MBL: 311-6-1,12, 8; MBL: 311-4-1,2,3,4,5

<u>SALVATION ARMY</u>	<u>Project Status</u>
Sketch Plan	Submitted in
Preliminary Plan	Submitted in July
Application Complete	Conditionally determined complete in July
Site Walk	Held August
Public Hearing	Held August
Final Plan	Scheduled September

At the August meeting, the PB decided additional information was needed before the Board could issue a final decision. The additional information requested was public works input regarding utility line access and conditions, ponding in the loading area, accuracy of the survey, and plan for idling vehicles and plan during events and noise generated by delivery vehicles. In response:

- The applicant prepared a summary of the stormwater management plan which states the design is predicted to improve the existing conditions and reduce flows to town drainage systems and neighboring properties. The stormwater has been designed by an engineer and reviewed by the town PW Director (DPW) and consulting engineers, Wright-Pierce (WP). Regarding the surface water drainage it appears ponding was the town's primary concern which the applicant states the proposed improvements shows less ponding will occur. WP new comments recommend further coordination with DPW to address. DPW and the applicant's engineer have been in touch. Regarding existing drainage systems, the applicant predicts the proposed work on the Army's property will improve existing conditions and reduce flows. DPW has some concerns associated with maintenance and repairs on the Oakland Ave system and wants inspection performed and problems identified before work begins. Regarding utility easements, one exists in the area DPW is most concerned about (by the pavilion). In the area behind Oakland Ave., DPW acknowledges this area will be difficult to access should they require repair or maintenance which is why DPW requests these lines be inspected before work begins. It appears that DPW isn't concerned about the right to access, just the how. Note: see conditions.
- The applicant submitted a letter from a land surveyor summarizing the accuracy of the Army and Oakland Ave properties shared property boundary line. The surveyor states the boundary lines were based on a 1990 boundary survey prepared for the Army by Dow & Coulumbe, Inc. During 2017, Civil Consultants surveyors performed updated deed research and a field survey to ensure boundary line accuracy. Note: see conditions.

The applicant submitted a trolley route map and procedures plan to address the trolley issues. This plan discusses the trolley route, trolley numbers, idling, parking location, and traffic control. Note: see conditions.

In addition to the requested info above, the PB heard several concerns at the public hearing (letters received in your packet). Concerns include:

- Setback along the back of Oakland Ave property.
- Stormwater including surface water run-off, capacity/condition of drainage system, roof drain discharge.
- Vehicle noise, idling, air pollution.
- Fire safety- building location in respect to properties along Oakland.
- Trespass on Salvation Army property for use of drugs.
- Blasting during construction.
- Noise from HVAC units.
- Exterior lighting to bright as proposed.

Some of these concerns were addressed at some point during the application review process (e.g., HVAC relocated and buffered to meet dBA standards). Some of these concerns are addressed as part of the building permit process (e.g., building fire safety, blasting). Some are more social issues and difficult for the PB to regulate (e.g., drugs). Ultimately, does the PB feel the applicant adequately addressed abutter concerns as related to the Site Plan Review Criteria? Although the concerns may be addressed or may not fall under the PB's jurisdiction, perhaps the Army could take additional steps to improve a concern. For example, can the exterior lighting adjacent to the Oakland Ave. properties be buffered beyond what is proposed? Another example regarding drugs, I reviewed police reports and spoke to Chief Kelley and there does appear to be a drug and alcohol problem in this area. Although the Army is not the cause, perhaps they can be part of a solution by working with the police to identify problems and helping with solutions (e.g., more lighting in certain areas, additional property monitoring).

RECOMMENDATIONS: The PB's primary responsibility is to determine if the proposal complies with the 9 Site Plan Review Criteria (included in this month's submission). In order to comply, staff feels the following conditions are necessary:

1. Construction of a trolley parking area adjacent to the Sixth Street travelled way and Tabernacle. This area shall be shown on a revised site plan
2. Land Survey shall be completed and submitted to planning staff before construction begins.
3. The portion of the proposed building parallel to the southerly boundary lines of lots fronting Oakland Ave. shall be staked out and setbacks field verified before construction begins. This language shall be included as a note on the revised site plan.
4. The Salvation Army or their representatives shall work with OOB Public Works to help address blockages or maintenance items in the Oakland Ave. storm drain system before construction begins. This includes the drain line between the southerly line of Oakland Ave properties and the Salvation Army building.

BACKGROUND (AUGUST MEETING)

At the July meeting, the PB agreed the applicant needs to address staff and Wright-Pierce comments. Staff comments included three primary issues (one was addressing Wright-Pierce comments) and several miscellaneous other issues. The applicant's response includes a memo addressing staff comments, memo addressing Wright-Pierce comments, pavement stormwater discussion, deed for a recently acquired property, revised engineer plan set, and revised architectural plan set. Also, Wright-Pierce reviewed the response (applicant's August submission) to their comments and provided a new memo (26 July) to which the applicant provided a response (memo dated 31 July). Note the 26 July and 31 July are stapled together and titled "Applicant's response to WP memo and WP memo"

Regarding the three primary issues:

1. Waiver request. The PB granted the waiver at the July meeting.
2. Full boundary survey. The applicant states an updated boundary plan will be provided before the start of construction. A class 1 survey was provided but does not include some recent info. According to the applicant the recent info does not impact the area associated with the proposal. The PB appeared to be comfortable with accepting the submitted boundary survey and applying a condition.
3. Grading and drainage comments in Wright-Pierce memo. The applicant's August submission addresses Wright-Pierce comments. Wright-Pierce appears to have three concerns with the applicant's most recent response (31 July): ownership of some of the utility lines, town's ability to access and maintain utility lines, "continued ponding" of stormwater. Comments from Wright-Pierce email:
 - * There are a few comments that I would say require further coordination and discussion with the Town/DPW to determine if the long term access is acceptable (particularly if owned by the Town), so I would make sure that these can be addressed prior to construction beginning, as this will impact the layout. Additionally, there are a few areas where the applicant is proposing "continued ponding" of stormwater, so I guess I would ask how the Town would like to handle this issue, particularly as it is an off-site stormwater discharge. If helpful, we can chat about some of the comments.
 - * So, I am generally unclear on who owns what when it comes to some of the utility lines (storm/sewer). The report they provided lead me to believe the Storm drain line being redirected behind the building

is/will be owned by the Town. I would recommend any utility lines owned/maintained by the Town had a drainage or utility easement giving the Town the right to enter, maintain, repair, replace these lines in perpetuity. This would be different than the maintenance agreement in my opinion.

Proposal's often have a few engineering details to work out after PB approval but before construction begins. We believe these issues can be resolved but we are not clear if they present an important enough issue that needs resolution before the PB vote. As Wright-Pierce states, we need Public Works input. We asked the Public Works Director for comment. It's possible that we could add a condition requiring that this be addressed before construction begins.

Regarding the other issues:

- Response to Wright-Pierce comments. The applicant provided two memo responding to WP comments- 24 July response to WP 3 July comments and 31 July response to WP 26 July comments. There are some outstanding issues which are discussed above. Also, both WP and the applicant state some matters require input and further coordination with the Public Works Director. Staff and the applicant have contacted the Director. We recommend the applicant provide a list of what needs further coordination with the Director.
- List of site-specific BMP's. This is done.
- Public or private easements identified. The applicant states the final boundary survey will show all easement info. One question- are easements necessary for utilities? The Public Works Director was asked to comment.
- Proposed signs. Only signs are for traffic and parking.
- Dumpster screening. Screening added.
- Buffer/screening. The applicant states the existing and proposed vegetation and fencing meets the 25% - 74% buffer/screening requirements. Staff agrees.
- Parking lot landscaping. Staff feels the revised landscaping plan meets applicable ordinance standards.
- Street trees. Staff feels the revised landscaping plan meets applicable ordinance standards.
- Add individual tree details. Added to landscaping plan.
- Proposal exceeds the number of required parking spaces.
- Curbing and wheel stops. Shown on revised plans. Note FD Chief Dube prefers they not install granite curbing and no sharp edges. According to the construction detail drawing the curbing is concrete and it appears will be angled.
- HVAC noise. The stated the HVAC units will be moved to the roof and meet the 55/45 dBA standard, year-round. I believe the units will include a noise buffer. If this is so please add to the details plan.
- Status of DEP permitting. The applicant states the proposal requires a Permit-By-Rule. Once the PB determines no further plan changes are required the applicant will submit the PBR application to DEP. The PB could add a condition requiring the applicant to secure the PBR before construction begins.

A site walk and public hearing is scheduled during August. Occasionally these meetings bring issues to our attention that we were not previously aware of and may require the PB additional time to consider. There has been a fair amount of discussion concerning this proposal but staff does not know if the discussion is associated with issues substantial enough to warrant further engineering or other work.

DEPARTMENT COMMENTS (AUGUST):

FD:

In regards to the Salvation Army project, I would like to know what they plan on using for curbing in the parking lot and adjacent to the property Joe Cooper and I would prefer not to see granite curbing. On another note, I recently had a tour of the Church on the corner of Union and 6th Street, I was surprised to see that this 100 year old structure has no fire alarm system. I was wondering during this major project if they would consider putting a fire alarm system in that structure?

WWTF:

This is a substantial expansion and I will need their engineers to calculate how much more flow will be discharged. I expect PW will want to know if the plan to replace or add sewer connections. If so, we should be given drawings that indicate where these new connection will be.

RECOMMENDATIONS (AUGUST):

Staff believes our comments have been acceptably addressed. Also, we are comfortable with an updated survey submitted before construction begins as long as the applicant understands if the updated survey changes what the PB approves in regards to the building, parking or substantial changes to utilities including stormwater the proposal will need to come back to the Board. Our concern is the Wright-Pierce comments regarding ownership of some of the utility lines, town's ability to access and maintain utility lines, and "continued ponding" of stormwater. Some comments require the Public Works Directors' input. We could consider adding a condition that requires these issues be worked out to the satisfaction of planning staff, Public Works Director and Wright-Pierce before construction begins. Finally, we have yet to receive public comment so I'm unsure if this will bring new issues that require further evaluation to PB's attention.

If the new issues are not brought to the PB's attention and the Board is comfortable with conditions, Staff recommends approval with the following conditions:

1. An updated boundary survey shall be submitted to the town before construction begins.
2. Ownership of utility lines, the town's ability to access and maintain utility lines, and "continued ponding" of stormwater shall be resolved to the satisfaction of planning staff, Public Works Director and Wright-Pierce before construction begins.

BACKGROUND (JULY MEETING):

The Salvation Army is proposing the construction of a 12,000 +/- sq. ft. addition to the existing building, parking lots between Union and Church, loading/unloading area adjacent to the addition, sidewalks, landscaping, infrastructure, and other site work to support the proposed addition and parking lots. The proposal was introduced to the PB as a sketch plan at the April meeting (see background below). The proposal is now prepared for formal preliminary plan review and a determination of completeness. Also, scheduling a site walk and public hearing.

A lot of work has been done since the last time the PB considered this proposal. The applicant and staff were in regular contact while prepping for this preliminary plan submission. Some of the primary issues found during sketch plan, which included lot merger, setbacks, and overall site layout, have been or are in the process of being resolved.

As part of preliminary plan review the PB is tasked with a determination of completeness. A preliminary plan can be determined complete when the application contains all relevant info necessary to make a reasonable and informed decision. Often the PB finds an application is complete but requests more or improved information. In such instances the PB makes a determination of completeness contingent upon the applicant making corrections, additions, etc. identified by the Board. I believe this is the case with this proposal.

There are three primary issues that need resolution- waiver request, boundary survey and Wright-Pierce grading and drainage comments. There are other issues that need clarification, plan amendments, etc. See below for further info (Wright-Pierce memo is included in this month's packet).

Three Primary Issues:

- Waiver request. The applicant is requesting a waiver of 78-1491 (d) which limits the number of driveways along local streets to one per lot. The proposal includes 3 parking lots (2 new) each with their own driveway along Church St. One of the reasons this request is made is due to staff recommendation to merge lots. By merging lots it makes a cleaner layout and allows for easier navigation of zoning standards. If the lots were not merged, the proposal would most likely have 3 driveways (one/lot). So, access to Church would most likely be the same with or without the merger. But the merger allows for a better overall plan. The applicant's packet includes a traffic report (which considered the driveways) and concludes there will be a net positive impact on the surrounding roadway network. Also note that the existing Union Ave driveway will be removed with this plan and as noted in the traffic report, elimination will improve access management. There are no objections from department heads and planning staff.
- A full boundary survey is not included in this submission. The applicant notes this survey is being done and will be provided prior to issuance of building permits. The plans include approximate property boundaries identified via an "on-the-ground" survey in June 2017 and are sealed by a land surveyor and engineer. The applicant states that they believe the property line location is sufficient for planning purposes. One question- there are areas

where the proposed building is right at the minimum property line setback (15 ft.) so is sufficient for planning purposes good enough. In my opinion, I believe it is as it will be the responsibility of code enforcement to verify the proposal meets applicable setbacks before permit issuance and during construction.

- Grading and drainage comments. Wright-Pierce notes in their 7/3/17 memo that downstream receiving facilities have noted the existing storm drainage facilities are taxed, and therefore the management or pre-development to post-development flows are critical in this project area. The memo includes several comments regarding this which we'll need the applicant to address.

Other Issues (no particular order of importance):

- Response, including any plan amendments/additions, to the comments is Wright-Pierce memo dated 7/3/17.
- A Post-Construction Stormwater Management Plan (PCSMP) has been submitted for the project for the Planning Board to review. We recommend a list of site-specific BMPs with designation on where they discharge to and if they have the potential to discharge to the Towns MS4.
- Existing public and private easements marked N/A- why N/A? Was this researched?
- No proposed signs?
- Add dumpster fence section in the details.
- No changes to buffer along new building area facing Oakland Ave. This should be ok for the properties owned by the Salvation Army because they will be merged. But there are 2-3 properties not owned by the Army which will be close to the proposed building. Should the buffer/screening in this area be increased or does it already meet the buffer requirements? Does the buffer/screening meet 78-1821 – 24? The area is now a parking lot which has different buffer/screening standards than a building.
- Parking lot buffer/screening is shown on the plan but it's difficult to determine how it meets 78-1544. Maybe just a brief explanation will do.
- Street trees (along Church and Union)- please explain how the conceptual planting plan meets 78-1771 – 1775 (Street Trees).
- Individual trees that are part of the planting plan should be added to the detail plan or as part a landscaping plan.
- Proposal exceeds the required # of parking spaces. Required- 46 (1/6 seats @ 275); Proposed- 75.
- Wheel stops and curbs (78-1542 f)- couldn't find on the plan or detail sheets.
- HVAC compressors/noise. Area associated with proposed development is in the R2 District which has a noise standard of (dBA) 55 day, 45 night. Although, 26-62 (13) specifically regulates noise associated with the Salvation Army Pavilion which reference the MBL that includes the land associated with the building expansion. This allows for 70 day, 60 night at certain time of the year. The applicant could argue the 70/60 standard applies to the area associated with the building addition but this would only benefit them on a seasonal basis- the noise standard goes back to 55/45 during the fall/winter months. So, the applicant needs to demonstrate how the proposal meets 55/45 dBA. I assume the HVAC compressors may be the biggest generator of noise.
- Status of DEP permitting?

DEPARTMENT COMMENTS (JULY):

Nothing received

RECOMMENDATIONS (JULY): Staff recommends the following:

1. Vote on the waiver request. Staff supports this request.
2. Discuss the full boundary survey. Will the survey data provided be sufficient enough to move forward? Staff believes it is as long as the updated boundary survey is provided to codes at the time of permitting.
3. Discuss the other issues identified in this memo and any others you may have. What can be resolved by explanation? What needs to be submitted to resolve?

4. Determination of completeness. If the PB feels they can determine the application complete it must be contingent upon receiving corrections, additions, etc. as identified by the Board.
5. Schedule site walk (3 August).
6. Schedule a public hearing (10 August) if the application is determined complete.

BACKGROUND (APRIL MEETING):

First, and most important, the comments below are focused on Option H. The reason for this is because Option N includes elements that assume Salvation Army's ownership of public and private property that it has not yet acquired and the PB does not have the authority to decide on such matters. It assumes ownership or development rights of some kind over Church St. and its ROW as well as a few private parcels. Regarding public property acquisition, this matter falls under the Council jurisdiction and possibly the public as a whole. The applicant should discuss with the town manager to learn more about this process. The PB can discuss, provide suggestions, and hold an informal public hearing but should refrain from any formal decision (including determination of completeness) until the property matter is resolved. At this time Option N should be approached as an item for feedback only.

Below are comments associated with Option H. These comments are primarily related to the sketch plan submission and applicable Ch. 78 Performance Standards (Art. VIII). The applicant should be prepared to address these as they move forward to formal submission.

- The side property setback is 15'. It appears some of the proposed building area is within the setback. If the applicant intends to move forward with building area within the setback they should apply for a variance before proceeding with PB review.
- Lots acquired by the Salvation Army, although owned by the Army, are considered separate parcels for zoning purposes. This means property lines still exist along with any setback, buffer, etc. requirements. The plans show parking lot area crossing the property line, too. The best way to avoid any potential limitations that may result from this is by combining the lots.
- 78-1491 – 1495 (access standards for nonresidential uses) includes driveway standards such as dimensions, sitting, dimensions, sight distances, etc. One particular note that will impact this proposal is one driveway is permitted for each street fronting a parcel.
- 78-1541 – 1544 (parking lot and site circulation) includes parking dimensions and layout, snow removal and landscaping. 1541- do the pedestrian sidewalks meet (f)? How about pedestrian sidewalks for new parking between Church and Union? 1542- Don't forget (f) wheel stops and curbs. 1543- need snow removal plan. 1544- remember screening and buffering plan is needed when adjacent to properties not acquired by the Army including those along Oakland and Church. Street trees in accordance with 78-1771 -1775 needed along Union, Church and 15th.
- 78-1566 – 1568 (required parking spaces) identifies church uses at 1 space per 6 seats in principle sanctuary or meeting. One question- if the space is used for non-church functions should another parking space standard be considered?
- 78-1591 – 1596 (off-street loading). It appears the area ID as Service Area is the proposed loading area. A few thoughts- is there enough room to turn around without backing on the street? May need more buffering along Church St. if the residential properties are not acquired. Need to show lighting.
- 78-1746 – 1827 (landscaping and buffering) includes landscaping and buffering standards primarily for the building. Some of these standards, such as street trees, are also applicable to parking lots.
- The proposal will most likely be required to meet applicable standards in our post-construction stormwater ordinance (Ch. 71).

RECOMMENDATIONS (APRIL): Sketch plan review provides an opportunity for the PB to offer recommendations- even if they're not specifically related to complying with an ordinance standard. As you

know, this proposal includes two options. Staff believes the PB can provide feedback on both but should focus on Option H. We expect a fair amount of public interest so it may be a good idea to have two public hearing hearings or one general comment public meeting before determination of completeness and the formal public hearing after. There are no decisions required at this time.

ITEM 4

Proposal: Zoning Map Amendment: Change Zoning District from Residential 1 to Downtown District 2 for two lots located at 6-8 St. John St. and 10 St. John St.
Action: Discuss Map Amendment; Schedule Public Hearing
Owner: Neal Weinstein
Location: 6-8 St. John St. (MBL: 206-24-32) and 10 St. John St. (MBL:206-24-31)

This purpose of this proposal is to amend the town zoning map by removing the Residential 1 District (R1) and replacing with the Downtown District 2 (DD2) for two lots located 6-8 and 10 St. John’s Street (see memo attachment). The reason behind this amendment is the owner would like the increased density DD2 allows compared to R1.

One of the primary tests associated with zoning district changes is its conformance with the comprehensive plan. Staff reviewed the Future Land Use Plans from both the currently adopted and draft comp plans and concludes that this proposal is in conformance with both plans. The current comp plan shows the subject area as B-2, which is basically the same as DD2 (maybe the B-2 name was changed to DD2). B-2 allows for a variety of retail, business and residential uses, including higher density residential- similar to DD2. The draft plan shows the subject area as Downtown Residential which will allow higher density for residential uses compared to the current R1 zoning.

The subject area abuts the DD2 so this proposal will extend the DD2 district (no leapfrog of lots or districts). Single-family is the current land use for both properties. One of the subject lots was at one time used as a church. Uses surrounding the subject area vary- businesses, campground, multi-unit residential, single-family residential. Public utilities serve the area.

Because the proposal is a zoning map amendment, it requires a public hearing to be held by the Planning Board (PB) as well as a PB recommendation to the Council. Amendments such as these can be formally adopted only after a favorable vote of a majority of Council members.

Ordinance standard associated with map amendments:

Sec. 78-31. - Amendments to chapter.

(a) This chapter may be amended from time to time as the needs of the town require after public hearing on a proposed amendment held by the planning board and following posting and publishing of notice of the hearing.

(b) Such notice shall be posted in the town office at least 14 days before the public hearing and shall be published at least two times in a newspaper of general circulation in the town. The date of the first publication must be at least 14 days before the hearing, and the date of the second publication must be at least seven days before the hearing.

(c) Amendments to this chapter shall be adopted only after favorable vote of a majority of the members of the town council.

RECOMMENDATIONS: Staff recommends the PB schedule a public hearing for October.

ITEM 5

Proposal: Conditional Use (Shoreland Zoning): Reconstruction of a nonconforming structure
Action: Determination of Completeness; Schedule Site Walk and Public Hearing
Owner: Kevin H & Marie Hedberg
Location: 10 Tioga Ave, MBL: 321-25-3

10 TIOGA

Project Status

<i>Application Complete</i>	Recommended for September
<i>Site Walk</i>	Recommended for October
<i>Public Hearing</i>	Recommended for October

This proposal is for the replacement and expansion of a single-family structure located within the Residential Activity Shoreland Zone. Because the structure at 10 Tioga is within a Shoreland Zone (Residential Activity) and because the structure is nonconforming (it is within the 100’ setback) of the Highest Annual Tide, expansion and/or relocation requires Planning Board (PB) review as a Conditional Use and Shoreland Nonconforming Structure Expansion/Relocation. The applicant is not proposing to expand the footprint of the dwelling, however, they are planning to increase the floor area and volume by 30% by expanding the dwelling upward with a garage underneath.

The last proposal the PB saw that was similar to this was the proposal to replace the cottage at 129 West Grand. These proposals are odd because Shoreland Zoning typically applies when a property is within 250’ of a waterbody. In regards to Shoreland Zoning in this area, the Town took the State Shoreland Zoning rules a step further and applied their own rules to areas that fall within the Highest Annual Tide of 6.3 feet. This approach was part of the Town’s efforts to prepare for sea level rise.

A NRPA permit has been submitted and approved by the DEP.

To rule on this proposal, the Planning Board has a few considerations:

- This proposal must demonstrate compliance with the 12 Conditional Use Standards (78-1240). Responses to each of these have been provided in the application materials submitted for September.
- This proposal must also demonstrate compliance with the 8 standard conditions in the Shoreland Zone (78-34(e)). Responses to each have been provided in the application materials submitted or September.
- Because the structure is nonconforming, the existing floor area or volume cannot increase by more than 30% (78-1181(c)(1)). Floor area is the square footage of all floors, porches and decks. Volume is the space within a roof and fixed exterior walls. Calculations for floor area and volume have been included in the application materials for September.
- Relocation of the structure away from the “water” (Highest Annual Tide) to the greatest extent possible (78-1181(c)(2)). Shoreland standards seek to make nonconforming structures as conforming as possible so one standard requires nonconforming structures to be moved as far away from the water as possible. The Applicant has indicated that reconstruction of the existing dwelling will be in the existing footprint so the proposed dwelling will conform to the setback standards to the greatest extent possible.
- Typically with Shoreland Zone proposals a plot plan (scaled) showing existing conditions and proposed changes is submitted. The plan generally includes property boundaries, where the “water” is located on the property, structure footprint, driveway, vegetation, fences, etc. However, because this project is not changing the footprint of the structure, Planning Staff is leaving the decision on the submission of a plot plan up to the PB. Note that a GIS print out showing the HAT in relation to the property has been included in your packet for September as well as a boundary survey and floor/building plans.
- An Erosion Control and Sedimentation Plan is required for all projects in the Shoreland Zone (78-1215). Since the footprint of the existing and proposed structure is not changing, this does not have to be

particularly detailed but should list the type of BMPs to be used on the site. This has been included as part of the cover letter in your September application materials.

- The proposal includes lifting the structure up and putting a garage underneath which will be accessed from Tioga. To the right of the structure is a gravel area that is currently used for parking. The Applicant has indicated that this is the only spot on the street that is not paved and they were hoping it would be. There is a grassy esplanade in front of the property. The Applicant intends to use the existing gravel area for parking as well as the future garage. An appeal process for a second opening will have to happen with Public Works as only one drive way opening is allowed.



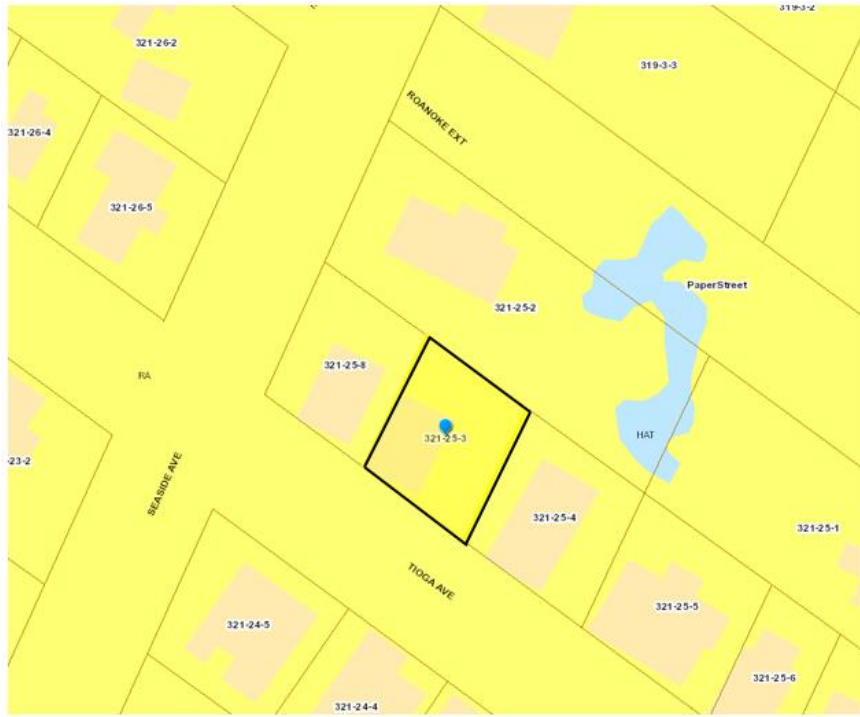
RECOMMENDATIONS: At the September meeting there are three primary items the PB has to focus on: Determining whether or not the application is complete, scheduling the site walk, and scheduling the public hearing. Planning Staff is leaving the decision on the plot plan up to the Planning Board.

Planning Staff has two recommendations for the September meeting:

If the PB decides not to require a plot plan for the project, then Planning Staff recommends determining the application as complete and scheduling a Site Walk for October 5th and a Public Hearing for October 12th.

If the PB decides to require a plot plan for the project, then Planning Staff recommends determining the application as complete contingent on receiving the plot plan for the October meeting and scheduling a Site Walk for October 5th and a Public Hearing for October 12th.

Before making a ruling on the application, the PB should also determine if the proposal conforms to the 12 Conditional Use standards and the 8 standard conditions in the Shoreland Zone. These have been included in the submission materials for September.



ITEM 6

Proposal: Subdivision Amendment: Amend Cherry Hills Estates drainage easement adjacent to lot B24
Action: Discussion, Ruling
Applicant: Cary Seamans
Location: Cherry Hills Estates, Cherry Hills Rd., MBL: 105A-1-B24

<u>Cherry Hills Amendment</u>	<u>Project Status</u>
Sketch Plan	Not Required
Application Complete	Not Required
Preliminary Plan	Not Required
Site Walk	Not Required
Public Hearing	Not Required

The Cherry Hills subdivision amendment proposed to amend the setbacks for lot B24 and drainage and utility easement. The reason for the proposed amendment is the home was built within the setback and easement. The proposed amendments include:

- Amend lot B24 setback fronting Wild Dunes Way and Cherry Hills Dr. Wild Dunes Way: approved plans show 40', amended plans request 30'. Cherry Hills Dr.: approved plan shows 30', amended plan 28'.
- Amend drainage and utility easement along Wild Dunes Way and Cherry Hills Dr. Wild Dunes Way: approved plans show 40', amended plans request 30'. Cherry Hills Dr.: approved plan shows 30', amended plan 28'.

As you may see, this utility and drainage easement is associated with the pump station located adjacent to Cherry Hills. We know the current pump station is temporary and a larger pump station is proposed. Our concern is how will the permanent pump station and its associated equipment (electrical, etc.) be installed with the reduction in the easements size. Stephanie Hubbard, our consulting engineer, offered comments that reflect our concerns (in submission too):

- I would recommend the applicant confirm that all utilities proposed within the original 40-foot easement along Wild Dunes Way and 30-foot easement along Cherry Hills Drive were constructed and provide adequate space for long term maintenance within the easements proposed.
- I do want to highlight that this project originally included the replacement of the existing/temporary pump station with an upgraded station. The design of this station was adjacent to the existing station (within the limits of B24) and would require most of the 40-foot easement for construction and to provide access and screening for this station. I have Enclosed is a snip clip of the pump station layout included in Sheet 11 (site plans provided for construction) as dated 09/11/2009 showing the details of this. I would recommend the location and layout of this updated pump station be discussed prior to reducing the setback in this area.

BH2M responds (in submission too):

Attached is a plan showing a proposed pump station layout should the pump station on Lot B24 ever be updated to a 2 chamber system. This layout is only updated by sliding the entire design towards Wild Dunes way to make room for a row of shrubs or fencing to create a visual barrier from the existing home.

All water valves and manholes along Wild Dunes were survey located to show existing conditions. Also, as you know, the house on B24 is existing and should help reduce concerns of any utilities that could be outside of the easement along Cherry Hills Road.

Staff has no problem supporting this amendment as long as the adjustments to the easement continue to allow for the installation of the permanent pump station and associated equipment. This includes satisfying Stephanie's comments. Note this is a setback and easement set by the PB (the PB can do for some instances in the PMUD) so ZBA is not required

RECOMMENDATIONS: As long the PB receives assurances that the changes will allow for the installation of the permanent pump station and associated equipment staff recommend approval with the following conditions:

1. Revised plan needs to include drainage, equipment, buffer changes within the easement.
2. Access to the pump station shall be constructed as shown on the revised plan on or before _____.

ITEM 7

Proposal: Subdivision Amendment: Amend The Turn Plan and Findings of Fact (units to lots, no increase to numbers)
Action: Discussion; Ruling
Owner: Dominator Golf, LLC
Location: The Turn Subdivision, Woods Lane & Mickelson Way, MBL: 105A-1-800 & 200

<u>The Turn Amendment</u>	<u>Project Status</u>
Sketch Plan	Not Required
Application Complete	Not Required
Preliminary Plan	Not Required
Site Walk	Not Required
Public Hearing	Not Required

This proposed amendment includes a plan and finding of fact change. The plan change proposes to remove individual building footprints shown on each lot and replace with building envelopes; add a note (#18) stating all driveways must meet applicable OOB driveway standards; add a note (the second #21) stating impervious surface for each lot. The FOF change includes removal of the condominium language and replacing with residential subdivision.

Regarding the plan change, the approved plan shows building footprints on each lot. Because footprints are shown on the signed plan, any modifications to the plan, including adjustments to the footprint as simple as a bump out, would require subdivision amendment review by the PB. This will most likely require numerous amendments over a varied amount of time, taking considerable PB, staff and owner resources and time. The easiest resolution to this is to replace building footprints with building envelopes. This allows for a lot more flexibility and should eliminate the need for numerous subdivision amendments. One of the problems is building footprints are usually placed for a reason- primarily to control square footage for stormwater purposes. The addition of a plan note (the second #21) and, possibly, other measures (offered by the applicant?) can help ensure the impervious surface calc is met. Regarding the driveways, these are included with the impervious surface calcs too so the note #18 should help ensure they are designed and located in accordance with the impervious surface calcs and OOB driveway ordinances.

The FOF amendment proposes to remove the condo language and replace with residential subdivision so it is clear this proposal is not a condo development. It was recently found this proposal, although identified in the FOF and some documentation as a condo, has elements that are more common with a regular residential subdivision. This includes individual lots with their own meets-and-bounds and no limited common elements. Because the proposal was essentially approved as a typical subdivision, staff is comfortable with this amendment.

RECOMMENDATIONS: Staff recommends the PB approve the proposed subdivision amendment to The Turn by amending the FOF to remove condominium and replace with residential subdivision (and other language adjustments to clarify the change) and amending the plan to remove building footprints and replacing with building envelopes as well as the addition of two notes (renumber the second #21). As a recommendation, we request the developer/applicant/owner to develop a plan to insure each lot developer and future owner is aware of the driveway requirement and the allowable impervious surface square footage for each lot.

ITEM 8

Proposal: Designation of Amusement Overlay District on a parcel located at 25 West Grand Ave
Action: Review submissions; Ruling
Applicant: Palace Playland. **Owner:** Ocean Parking Inc
Location: 25 West Grand Ave, MBL: 307-1-2

This item proposes to designate the Amusement Overlay (AO) on the property located at 25 West Grand Ave. The current use of this property is parking and an eating establishment. Granting the AO designation will allow Palace Playland owners to move forward with their plan to expand the amusement park onto this parcel.

The AO is permissible for lots within the DD1 that have one-acre or more of land. Properties may be designated by the PB as being within the AO provided that the PB receives a written petition from the property owner and certifies that the proposed operation conforms to all sections of the AO ordinance. So, to designate a lot within the AO:

- It must be within the DD1
- It must have 1 acre or more of land.
- The PB must receive a written petition from the property owner certifying proposed operations conform to all sections of the AO ordinance.

It may seem odd the PB alone has the authority to grant AO designation- we're used to district changes including authorization from the Council. Why the PB alone has this authority is because properties in the AO that meet certain requirements have already been 'rezoned' by the Council through their power of adoption of ordinance standards that grant the PB this authority. The Council already approved AO designations provided a lot meet certain requirements which are identified above. One of these requirements is PB formally granting AO designation.

During April 1996, the PB granted AO designation for the two existing Palace Playland lots. The motion to grant: "Grant the Amusement Overlay designation, recognizing that there are legally non-conforming setbacks and development on the property and that any future development would have to comply with the Amusement Overlay standards." There was no action to confirm the AO designation by the Council after the PB's ruling.

Regarding setbacks, note the 1996 motion recognizes that some structures and buildings existed within setbacks before adoption of the AO ordinance (mention of legally nonconforming) but future development must comply with AO standards. In my opinion, new structures and buildings must meet applicable setbacks within the area proposed to be included in the AO. The applicant's agent appears to recognize this by stating "all new activities located on the new property will comply with the space and bulk requirements in 78-1086." This may be a bit tricky because the lot (and new area) will be combined with the existing Palace Playland lot creating one contiguous parcel of land. I say tricky because structures or buildings that cross the former property line will have two different setbacks. Also, as time passes, how will future developers, staff, etc. know that different standards apply to different portions of the combined lot? Maybe a plan should be created showing some kind of line that separates each area for AO regulatory purposes.

Regarding the 1 Acre requirement, the standards state the AO designation is applicable to lots of 1 acre or more. The lot associated with the proposed designation is 0.80 acres. The applicant proposes to combine this lot with the adjacent lot (1 Staples St.; MBL: 307-1-1) which is under their ownership. This will create a lot in excess of 1 acre. If the PB grants AO designation, it must do so contingent upon both lots being combined to create a single lot.

Regarding new activities, etc. on this lot, development will be subject to complying with AO ordinance standards. There appears to be no 'grandfathering' of nonconforming amusement-related structures or buildings because none exist. The applicants 'petition' certifies that proposed operations will conform to all sections of the AO ordinance. This includes compliance with the state fire marshal's requirements. One request (or condition) is any future development should include consultation with the OOB FD Chief.

Included in your September packets is a letter from the abutter, The Beachwood. It is our opinion that The Beachwood is an abutter who could experience the most impacts from this proposal. We recommend that you read and consider the points discussed with these documents. If AO ordinances do not provide for adequate buffers to reduce potential impacts perhaps Palace Playland can work with The Beachwood to address these matters.

RECOMMENDATIONS: The PB's responsibility is to rule on the proposed AO designation for a lot located at 25 West Grand Ave., MBL: 307-1-2. The PB should first determine if they support the opinion that they have authority to grant AO designation. If no, the PB should state the reasons why and recommend next steps. If the answer is yes, next is consideration of the 'petition'- does the PB feel the petition certifies that the proposed operation conforms to all sections of the AO ordinance? If the answer is yes, the PB can grant the AO designation. If the answer is no, the PB should state the reasons why and recommend next steps.

If the PB grants the AO we recommend the following condition: The property located at 25 West Grand Ave., MBL 307-1-2 shall be combined with the property located at 1 Staples St., MBL: 307-1-1 to create a single parcel of land. Proof of the land combination shall be completed and submitted to the OOB planning office before development begins on the property located at 25 West Grand Ave.

In addition to the condition, we make the following requests (some could be conditions):

- For the purpose of AO regulations, creation of plan showing a division line separating 25 West Grand Ave. and 1 Staples St. properties.
- Consulting with OOB Fire Chief in regards to future development.
- If needed, Palace Playland owner to work with The Beachwood owner to discuss and implement buffers.

ITEM 9

Proposal: Conditional Use: Private Way Application
Action: Determination of Completeness; Schedule Site Walk and Public Hearing
Owner: Southern Maine Modular, Inc
Location: Adjacent to Portland Ave., MBL: 205-1-37

<u>PRIVATE WAY</u>	<u>Project Status</u>
<i>Application Complete</i>	Recommended for September
<i>Site Walk</i>	Recommended for October
<i>Public Hearing</i>	Recommended for October

This proposal is for the establishment of a Private Way to serve two lots located across from the intersection of Portland Avenue and Cascade Road. In your packet for September are the following items:

- Private Way Application and Supporting Materials
- Stormwater Management Report
- Draft Declaration of Maintenance of Private Way
- Comments from Wright Pierce

This property was originally part of a 7-lot division plan that was prepared in 2001 which included a private way to provide legal street frontage for the proposed lots. This subdivision was never approved by the Planning Board and has since been used to divide lots without construction of the private way. These lots were divided through family transfers or in a matter that did not trigger subdivision review.



This proposal is before the PB because the Applicant needs to obtain frontage for lot 37 in order to be able to construct a single-family home and sell the lot. The proposed private way is a 265 linear foot gravel road, 16 feet wide, which will follow the existing gravel driveway constructed by the owner of lot 36. A hammerhead turnaround is provided at the end, the dimensions for this were provided by the DPW Director. There will not be a new curb-cut on Cascade Road.

The private way will have underground electric, cable, and telephone conduits from the existing utility pole on Portland Ave. For sewer, the project will connect to the private line that the owner of lot 36 has installed. The Applicant is proposing a potable well instead of making a new connection to the public water main on Portland Ave.

During the design of the road the Applicant ran into some issues with wetland delineation and a stream. Due to the proximity of the wetlands and the floodplain, the private way was slightly redesigned. A stormwater management plan has been submitted for the new roadway. The private way also requires a PBR from the DEP, this application has been submitted.

A draft copy of the Declaration of Maintenance of Private Way has been included. Planning Staff recommended that the applicant coordinate with the owner of lot 36, Alan Hess and the PB should receive information on this proposal from Alan.

Wright Pierce provided comments on the submission materials. Some of the items that it is recommended the Applicant address include:

- Confirmation of adequate sight distance from the Private Way on Portland Ave. *Planning Staff recommends that the applicant provide this information for the October meeting.*
- Review of setbacks for adjacent driveways and centerline of offset intersecting streets. The proposed private way is approximately 130-feet from the offset intersecting Portland Avenue and is located 20-feet from the existing paved driveway serving the abutting lot 30. *Staff will confirm this information prior to the October meeting.*
- Confirmation of the sewer connection to the proposed Lot 7 including design and construction of the existing private sewer line by Hess. Information on the size of the line and service connections have not been noted on the plan with the exception of a “likely location of a stub.” *Planning Staff recommends that the Applicant provide this information for the October meeting.*

RECOMMENDATIONS:

There are a couple of items that were discussed in the Wright Pierce memo that the PB may want to have submitted for the October meeting including sight distance information, review of setbacks for driveways and intersecting streets, and confirmation of the sewer connection.

In addition, communications with the Abutter, Alan Hess have not been included in the submission materials, this is something that the PB may want to see for the October meeting.

These items can be included as a condition for the October submission as part of the Determination of Completeness.

If the PB decides to determine the application complete, a site walk should be scheduled for October 5th and a public hearing for October 12th.

If the PB decides that the application is not complete, a site walk can still be scheduled for October 5th, however, the public hearing would have to wait until the November 9th meeting. Note: A decision could still be made at the November meeting.

ITEM 10

Proposal: Mobile Food Vendor Ordinances

Action: Discussion

Applicant: Town of OOB

On 2 August 2017, the Council enacted a moratorium on mobile food businesses. The moratorium defines mobile food businesses as “any business not qualifying as a restaurant or convenience store and offering for sale foodstuffs to be consumed by the public off premises, as the term Food Stand is defined in Chapter 78 of the Code of Ordinances of the Town of Old Orchard Beach, and including, in addition to food stands, food trucks and food carts.” The moratorium was enacted in response to concerns associated with food trucks and how mobile food businesses are regulated. Below are comments concerning moratorium key points, current language, current language interpretation, discussion points, and next steps.

MORATORIUM KEY POINTS

The moratorium (attached with this memo) includes the following key points and PB responsibilities:

- Takes effect on 2 August and expires on 1 October (61 days). The Council can extend, repeal or modify the expiration date.
- The Council have “acted to limit the licensing of food trucks and mobile food businesses and further expressed the intent to limit licensing of food trucks and other mobile food businesses.”
- The “Town’s existing ordinances do not adequately regulate food trucks or other mobile food businesses to prevent serious public harm from commercial development.”
- A mobile food business is “any business not qualifying as a restaurant or convenience store and offering for sale foodstuffs to be consumed by the public off premises, as the term Food Stand is defined in Chapter 78 of the Code of Ordinances of the Town of Old Orchard Beach, and including, in addition to food stands, food trucks and food carts.”
- The PB is responsible for “studying the appropriate amending of land use ordinances regarding the regulation of mobile food businesses” and “developing land use regulations concerning food trucks and other mobile food businesses.”
- The PB’s scope has limits due to the moratorium language. Interpretation of this language shows the Council determined our current ordinances do not adequately regulate food trucks or other mobile food businesses and task us with developing standards that limit licensing of food trucks and other mobile food businesses to prevent harm to commercial development.
- Mobile Food Business as defined in the moratorium is not currently defined in our ordinances. It includes language in the currently defined term “Food Stand” and adds “and including, in addition to food stands, food trucks and food carts.”
- Ordinance changes will include amendments to Ch. 78; therefore, the PB will hold a public hearing and provide a recommendation to Council.
- Although the Council can extend the moratorium expiration date the PB should consider this a priority so we may complete our work as soon as possible. Due to the meeting dates and actions required by ordinance (public hearings, etc.) I expect we’ll need at least one 60 day extension.

CURRENT LANGUAGE

Below is the current ordinance language that is most closely related to food trucks and mobile food businesses.

Food Stand Definition

Food stand means any business not qualifying as a restaurant or a convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

Food Stand Permissible Locations, Setbacks, Sales

Sec. 78-717. Permitted uses in the downtown district 1 (DD-1) shall be classified as follows:

(1) Primary uses. Primary uses are as follows:

g. Food stands (located between First Street/Milliken Street and the beach) with a minimum ten-foot setback from the front property line.

Sec. 78-1083. Permitted uses in the amusement overlay district (AO) shall be classified as follows:

(2) Complementary uses. Complementary uses are as follows:

d. Food stands with a minimum of a ten-foot setback from the front property line.

Sec. 50-246 (Streets, Sidewalks, and Other Public Places Ordinance). Outside Solicitation of Sales (Note: this may apply- see comments in Current Language Interpretation, below)

No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building.

CURRENT LANGUAGE INTERPRETATION

In an attempt to determine whether a food truck or mobile food businesses are a permitted use in the DD1 and AO Zoning Districts and because there is no definition for food truck or mobile food business in the town's ordinances, it appears the use classification that is the best fit is "Food Stand." Chapter 78 ordinance defines a Food Stand as:

Any business not qualifying as a restaurant or convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

The DD1 allows Food Stands in a specific area- between First Street and Milliken Street and the beach with a minimum 10 foot front property line setback (see attached map). The AO District allows Food Stands within the entirety of the district provided there is a 10 foot front property line setback (see attached map). Because the definition includes the language "any business not qualifying as a restaurant or convenience store" it has been interpreted by some that a food truck or mobile food business is permissible as a Food Stand as long as it's within the DD1 specific areas and AO, meets the 10' setback, and does not allow food to be consumed on premises which means food may be purchased on-site but it must be consumed off-site (per the definition of Food Stand).

Regarding Sec. 50-246, Outside Solicitation of Sales states: "No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building." Food trucks and mobile food businesses are not buildings so sales will take place outside the enclosed portion of a building because a building does not exist. Also, a food truck and mobile food business engages in sales. The problem lies in is food considered "goods, wares or merchandise." I believe the closest fit is "goods" but unfortunately, goods are not defined in the ordinance. When a term is not defined in an ordinance it is common to use a dictionary. I used two dictionaries, Webster's New World and Black's Law, to find a definition for goods:

(Webster's New World) goods: 1. personal property 2. wares 3. Fabric

(Black's Law) goods: 1. Tangible or movable personal property other than money; esp., articles of trade or items of merchandise <goods and services>. *The sale of goods is governed by Article 2 of the UCC. 2. Things that have value whether tangible or not <the importance of social goods varies from society to society>.

Considering the above-mentioned definitions, I find the only way food may be defined as goods is in Black's Law definition: "Things that have value whether tangible or not." This standard may not apply but it has some relationship to our discussion.

DISCUSSION POINTS

As discussed above, the PB is tasked with developing ordinance language that limits licensing of food trucks and other mobile food businesses. Current ordinance language regulates food stands which have been interpreted by some to include food trucks and all mobile food businesses. In order to change this language and develop standards that follow the Council's direction we offer a few discussion points:

- What should we do with the current Food Stand definition? Current standards?
- New definitions- Mobile Food Business, Food Truck, Food Stand, Food Vendor?, anything else?
- What are other names of food prep and servicing businesses that are temporary and not mobile?
- How will we be sure that regulations do not impact businesses like Lisa's Pizza and Bills that have no seating, are similar to a food stand, yet are in permanent structures?
- Should there be separate land use classifications for each mobile food business?
- Where should they be permitted? Not permitted? We can allow a use but not in the entire district (similar to food stands in DD1).
- Who should be responsible for reviewing and approving? Should it be a conditional use?
- Should there be specific performance standards, setbacks, etc. requirements for each use?
- If in design districts should DRC review?
- Food consumed off premises? What is off premises? This is something that could be included in a performance standard.

Planning staff requested input on this from town departments. We asked the following questions (MFB- mobile food business):

- Will MFB's impact your departments operations? If so, how?
- What are your experiences with MFB's?
- If MFB's are allowed, what regulations should apply?
- Should MFB's have separate use categories (e.g., food trucks and food stands have different regs)?
- Where should MFB's be allowed to operate? Private property only? The public ROW?
- Should they be allowed but with limited numbers and operation days?
- Should there be design guidelines? Operation guidelines?
- How about use of power, sewer, water, etc?
- Exemptions from the ordinance such as those that operate as part of a special event permit, cater a private event, operate in a restricted access area for use of that areas customers only (e.g. campground)?
- How should MFB's be licensed and/or permitted?

NEXT STEPS

At the PB's September meeting, staff requests the Board provide guidance to assist us with development of ordinance standards. Guidance includes your responses to the discussion bullet points above.

We are working under a moratorium which means our consideration has time limits. Moratorium expiration can be extended but we should ensure our work is complete within a reasonable amount of time. Proposed schedule:

- September: PB provide guidance to staff
- October: PB discuss draft ordinance, offer recommendations
- November: PB review second draft, schedule a public hearing
- December: PB hold a public hearing and provide recommendation to Council

OTHER BUSINESS

ORDINANCE AMENDMENTS: Nonconforming uses of land and structures

As part of the PB recommendations associated with the Appeals from restrictions on nonconforming uses amendments, the Board asked for changes to other nonconforming language so that it extends period of time (from two to five years) that a nonconforming use of land or structure can be resumed after ceasing. Below are the proposed changes.

Note on the proposed changes. The only change this will allow is a nonconforming use of land or structure can be resumed after it ceases for up to five years. Currently it's limited to two. It does not allow a nonconforming use land to be enlarged, increased, extended to occupy more land, moved or converted to another nonconforming use. Also, it does not allow a nonconforming use of structure to be enlarged, extended, constructed, moved, structurally altered or converted to another nonconforming use. Basically, this allows a nonconforming use of land or structure to resume operations within 5 years after it ceases, pretty much the same way it operated before it ceased.

Proposed deletions are struck, additions are in **bold** font.

Sec. 78-177. - Nonconforming use of land.

Continuance of nonconforming use of land shall be subject to the following:

(1) No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than that occupied at the effective date of the ordinance from which this chapter derives or amendment of this chapter.

(2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter.

(3) No such nonconforming use shall be converted to another nonconforming use on the lot or parcel.

(3 4) If any such nonconforming use of land ceases for any reason for a period of more than two **five** years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.

(Ord. of 9-18-2001, § 4.3.2)

Sec. 78-179. - Nonconforming uses of structures.

(a) *Generally.* No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, moved, or structurally altered **or converted to another nonconforming use** except in changing the use of the structure to a conforming use.

(b) *Extension of nonconforming use.* Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(c) *Superseded by permitted use.* If a nonconforming use of a structure or premises is superseded by a permitted use for a period of one year, the nonconforming use shall not be thereafter resumed.

(d) *Cessation of use.* If any such nonconforming use of a structure ceases for any reason for a period of more than two **five** years, any subsequent use of such structure shall conform to the regulations specified by this chapter for the district in which such structure is located.

(Ord. of 9-18-2001, § 4.3.4)